



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,718	03/25/2004	Gerrit Reinold J. Melles	05032-00052	5646

22910 7590 10/17/2007
BANNER & WITCOFF, LTD.
28 STATE STREET
28th FLOOR
BOSTON, MA 02109-9601

EXAMINER

MILLER, SAMANTHA A

ART UNIT	PAPER NUMBER
----------	--------------

3749

MAIL DATE	DELIVERY MODE
-----------	---------------

10/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/808,718

Applicant(s)

MELLES, GERRIT REINOLD J.

Examiner

Samantha A. Miller

Art Unit

3749

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 and 27-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 and 27-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The amendment filed 7/30/2007 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: In claims 26 and 32 the "at least one gap is provided" is new matter and the claims will not be entered.

Applicant is required to cancel the new matter in the reply to this Office Action.

Drawings

New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the hand drawn figure are not clear and often cluttered to displaying the claimed invention. Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the at least one air inlet opening is provided lower than said at least one air inlet opening must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Art Unit: 3749

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-25 and 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Howorth (3,602,212) in view of van der Waaij (3,893,457).

Howorth teaches:

1. An operation unit (Fig.1) (col.1 l.24), comprising a wall (col.1 l.25) and an air flow unit (b1) (col.1 ll.27-29), said air flow unit being provided with means for filtering (d) said air (col.2 ll.3-6 and ll.30-31) (Fig.3), said wall being provided with at least one opening (col.1 ll.44-47) and a cover, covering at least part of said opening (a2) (col.1 ll.40-43), said air flow unit comprising at least one air outlet opening (B) for directing air from said air flow unit (b1) over said cover (col.2 ll.20-26), air inlet (b, and opening around operating table) means (b) preferably being provided for retracting air to said air flow unit (col.2 ll.20-26) (Fig.1).

2. At least two side walls (col.1 l.25), a roof element (a1) and a back wall (a3) are provided for enclosing a space in which at least said air outlet (B) and said air inlet (b) are provided, said space being sufficient for enclosing at least a person (col.1 ll.44-61) (Fig.1 and 3).

3. The operation unit is at least partly foldable (being made of draped material a2 and lower panels hinged to upper panels) (col.1 ll.48-55).

4. The sidewalls are foldable over and/or against said flow unit (b) (hooked on rails in ceiling can fold up) (col.2 l.44-47), the back wall preferably being foldable (lower panel hinged and drape material) (col.1 ll.59-61).

5. The cover is substantially made of cloth/sheet, especially a surgery blanket/sheet (col.1 ll.40-43) (Fig.3).

6. The opening is dimensioned such that at least an end of a hospital bed, stretcher or the like can be inserted through said opening under said cover (col.1 ll.45-47).

7. The opening is dimensioned such that an extremity of a person can be inserted at least partly through said opening under said cover (col.1 ll.45-47).

8. The outlet opening (B) extends over at least the width of said at least one opening (Fig.1 shows multiple B extending width wise) (Fig.3 shows size of opening width wise).

9. The outflow direction of said outflow opening is directed downward in a direction away from said wall/drape (a2) (col.2 ll.34-37).

10. The air inlet opening (around operating table) is situated lower than said outflow opening (B) (Fig.3).

11. The openings are provided near the ground for connection of an inner space of said unit and the surrounding (col.1 ll.48-53).

12. At least part of said wall and preferably part of said wall and at least part of side walls and a back wall of said unit are made transparent (col.1 l.25).

14. The air flow unit (b1) is provided near the upper end of said wall and is connected to the air outlet (B) by a first connecting pipe (B duct) and to the air inlet (b) by a second connecting pipe (b duct) (Fig.1), said connecting pipes being provided near either side of said wall, preferably such that said connecting pipes and said air flow unit form part of a frame of said operation unit (Fig.1).

15. A method for preparing a person for surgery, in which said person is positioned on a bed, stretcher, chair or the like supporting structure, whereby part of the body of said person on which surgery is to be performed is moved through an opening under a cover (col.1 ll.43-45), especially a cloth/sheet, an opening being provided in said cloth disclosing an operation area, a flow of substantially sterile air being guided over said cover and at least said operating area (col.2 ll.31-40).

16. The air is re-circulated through a flow unit filtering said air for sterilization purposes (col.2 ll.31-40).

17. The part of said body is moved through an opening in a wall of an operation unit comprising a wall and an air flow unit, said air flow unit being provided with means for filtering said air, said wall being provided with at least one opening and a cover, covering at least part of said opening, said air flow unit comprising at least one air outlet opening for directing air from said air flow unit over said cover, air inlet means preferably being provided for retracting air to said air flow unit (col.1 ll.27-29) (col.2 ll.20-26) (Fig.2).

18. A method for performing surgery on a person, in which said person is positioned on a bed, stretcher, chair or the like supporting structure, whereby part of the body of said person on which surgery is to be performed is moved through an opening under a cover, especially a cloth/sheet, an opening being provided in said cloth disclosing an operation area, a flow of substantially sterile air being guided over said cover and at least said operating area (col.2 ll.31-40) (Fig.3).

Regarding Claims 19-25, 27, and 29-31, refer to the rejection of claims 1-18.

28. The at least one air outlet opening (B) or series of air outlet openings (B) extend over the width of the cover (Fig.1-2).

Howorth teaches the invention as discussed above. However, Howorth possibly does not teach a foldable roof element, wheels, or air inlet means provided for retracting air from within said operation unit to said air flow unit.

van der Waaij teaches:

Regarding claims 1, 17, and 19, air inlet means (3) provided for retracting air from within said operation unit to said air flow unit (within 15) (col.2 ll.5-13 and 44-62) (Fig.2).

4. The sidewalls (15) and roof element (14) are foldable over and/or against said flow unit (1) (col.4 ll.34-43).

13. The unit (1) is provided with wheels for easy displacement of said unit (col.3 ll.42-51).

Therefore, it would have been obvious to a person having ordinary skills in the art at the time the invention was made to have modified the operation unit of Howorth in view of the teaching of van der Waaij in order to be adapted to be placed at on extremity of an arbitrary existing operation table and to close the operating space to external air (van der Waaij, col.3 ll.42-51 and col.4 ll.34-43).

Response to Arguments

Applicant's arguments filed 7/30/2007 have been fully considered but they are not persuasive.

Art Unit: 3749

Applicant's arguments with respect to claims 1, 19, and 20 have been considered but are moot in view of the new ground(s) of rejection.

Applicant contends that Howorth does not teach the outflow direction directed downward away from said wall, an air inlet opening is situated lower than said outflow opening, or a cloth disclosing an operation area. However, claims are afforded their broadest reasonable interpretation.

In this instant application, claims 9-10 and 15 merely require the outflow direction of said outflow opening is directed downward in a direction away from said wall/drape, the air inlet opening (around operating table) is situated lower than said outflow opening, and an opening being provided in said cloth disclosing an operation area. It should be apparent that Howorth teaches airflow in a downward direction and parallel to the wall (a2) not towards the wall thus driving the airflow away from the wall (col.2 ll.34-37). Howorth also teaches two air inlet openings and the air inlet opening (around operating table) is situated lower than said outflow opening (B) (Fig.3). The cover Howorth teaches (col.1 ll.43-45) has an opening (around operating table) where the patient is placed for the operation (col.1 ll.43-45, col.2 ll.31-40) (Fig.3).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL** See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samantha A. Miller whose telephone number is 571-272-9967. The examiner can normally be reached on Monday - Thursday 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steve McAllister can be reached on 571-272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

Art Unit: 3749

USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Samantha Miller
Examiner
Art Unit 3749
10/8/2007

Steve McAllister

STEVE MCALLISTER
SUPERVISORY PATENT EXAMINER